

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT**

AMERICAN IMMIGRATION COUNCIL and  
AMERICAN IMMIGRATION LAWYERS  
ASSOCIATION CONNECTICUT CHAPTER,

Plaintiffs,

V.

DEPARTMENT OF HOMELAND SECURITY,  
Defendant.

Civil Action No. \_\_\_\_\_

This action seeks to enhance public understanding and oversight of one of the federal government’s largest but least understood immigration enforcement programs. The Criminal Alien Program (“CAP”) is an enormous, nationwide initiative of United States Immigration and Customs Enforcement (“ICE”), a component of the U.S. Department of Homeland Security, and is implicated in approximately half of all removal proceedings. CAP’s enforcement operations take place in tandem with law enforcement in every state, and as a result of CAP, individuals are often detained by ICE and deported before they have been convicted of a crime or have had the opportunity to speak with an immigration attorney. Despite CAP’s role in facilitating the removal of hundreds of thousands of individuals each year, and despite serving as ICE’s “bedrock” enforcement initiative, very little information about CAP is available to the public. What little is known about the program suggests that CAP exacerbates racial profiling and other abusive police practices.

Plaintiffs American Immigration Council (“AIC”) and the Connecticut Chapter of the American Immigration Lawyers Association (“Connecticut AILA”) are both actively engaged in

national debates surrounding immigration policy. By requesting public records about CAP, they seek to fulfill their organizational missions by educating the general public and their members about one of the central means by which the federal government implements its immigration enforcement policies. Plaintiffs therefore bring this action pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for declaratory and injunctive relief to compel the disclosure and release of agency records improperly withheld from them by Defendant United States Department of Homeland Security (“DHS”) and its component ICE.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter pursuant to the FOIA, 5 U.S.C. § 552(a)(4)(B), and 28 U.S.C. § 1331.
2. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1391(e) and 1402(a)(1), as Plaintiff Connecticut AILA’s principal place of business is currently in the District of Connecticut.

### **PARTIES**

#### **Plaintiff AIC**

3. Plaintiff AIC is a nonprofit educational and charitable organization whose mission is to “strengthen America by honoring [its] immigrant history and shaping how Americans think about and act towards immigration now and in the future.”
4. AIC educates citizens about the enduring contributions of America’s immigrants, supports sensible and humane immigration policies that reflect American values, promotes the just and fair administration of our immigration laws, and protects the constitutional and legal rights of noncitizens. AIC carries out its organizational goals through four core programs: the Immigration Policy Center, the Legal Action Center, the Community Education Center, and the International Exchange Center.

5. Each program contributes to AIC's core mission by providing informational resources to the public.
6. The Legal Action Center produces a newsletter, the LAC Docket, four times annually, which is directly distributed to 12,000 recipients and available to the public on the AIC website. The website also provides immigration case updates, decisions, analyses, and relevant resources, including practice advisories.
7. The Immigration Policy Center ("IPC") publishes "Immigration Fact Checks" updating the public on the state of immigration law; detailed, research-based special reports on specific issues; and an editorial series, "Perspectives on Immigration," which provides insights of those "inside and outside the immigration debate." The IPC produces numerous fact sheets on each of 20 distinct topics. The IPC also maintains a blog, available at [www.immigrationimpact.org](http://www.immigrationimpact.org). The LAC also contributes to this blog. All of the IPC's publications and resources are free and accessible to the general public on AIC's website.
8. Through its research and analysis, IPC provides policymakers, the media, and the general public with accurate information about the role of immigrants in, and the effects of immigration policy on, U.S. society. IPC reports and materials are widely disseminated and relied upon by press and policymakers.
9. AIC's website receives more than 58,000 monthly visits, and information from the site is regularly re-posted on other websites, such as Alternet, which has 2.3 million monthly visitors.
10. AIC's office and principal place of business is in Washington, DC.

Plaintiff Connecticut AILA

11. Plaintiff Connecticut AILA is a chapter of the American Immigration Lawyers Association (“AILA National”), a national not-for-profit association of more than 11,000 attorneys and law professors who practice, research, and teach immigration law. AILA’s mission is to promote justice, advocate for fair and reasonable immigration law and policy, advance the quality of immigration and nationality law and practice, and enhance the professional development of its members.
12. Connecticut AILA, through its affiliation with the national organization, provides resources, up to date information, and expertise to its approximately 150 member attorneys. Connecticut AILA also provides continuing legal education to its members.
13. In furtherance of its mission to promote justice and advocate for fair and reasonable immigration law and policy, AILA National provides members and the general public with up-to-date information, news, and commentary on all aspects of immigration law and policy through its website, [www.aila.org](http://www.aila.org), which is visited an average of 9,000 times each day. Those who visit AILA National’s website include immigration attorneys, media representatives, federal government employees, U.S businesses, foreign nationals, and other interested members of the public. Moreover, information posted to AILA’s website is often linked to the websites of other organizations and immigration attorneys.
14. In addition, AILA National publishes newsletters, e-magazines, and other print and electronic publications on immigration, including *VOICE*, which is free and accessible to the general public on AILA National’s website.
15. The office of the Chair of Connecticut AILA is currently located in New London, Connecticut, and the organization works throughout the state.

Defendant DHS

16. Defendant United States Department of Homeland Security (“DHS”) is the federal agency responsible for enforcing the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.* DHS is an agency within the meaning of 5 U.S.C. § 552(f). Immigration and Customs Enforcement (“ICE”) is the component of DHS responsible for enforcing the INA within the interior of the United States.

**STATEMENT OF FACTS**

CAP’s Creation

17. Congress never enacted legislation authorizing CAP. Nor did DHS officially promulgate regulations to govern CAP. As a result, little publicly available information exists that could illuminate how CAP functions. Instead, DHS and ICE stitched CAP together from interpretations of vague congressional appropriations provisions and a patchwork of administrative initiatives, thwarting public understanding of the program. Based on the very limited information in the public domain, Plaintiffs have been able to piece together the following background information about CAP.
18. ICE’s predecessor, the Immigration and Naturalization Service, and later ICE, devised what eventually became CAP, out of a panoply of overlapping programs. Congress never specifically authorized any of these programs in the INA or other legislation. These programs include the Alien Criminal Apprehension Program (“ACAP”), the Institutional Hearing Program, the Institutional Review Program, and the National Criminal Alien Removal Plan.
19. In or about fiscal year (“FY”) 2005, ICE began to combine ACAP and the array of related programs into an even larger single entity, CAP.

20. By FY 2007, the programs now united under CAP were fully integrated and under the control of ICE's Enforcement and Removal Operations.
21. ICE uses CAP to screen detainees in jails and prisons and to place removable noncitizens into deportation proceedings. This approach, described by ICE as a "jail status check," is also is the approach of two other ICE programs, the Secure Communities Initiative and the 287(g) enforcement program.
22. ICE has arranged these three "jail status check" programs under the larger, umbrella program ICE ACCESS (Agreements in Cooperation in Communities to Enhance Safety and Security).
23. As of 2008, ICE had installed CAP in all state and federal prisons, as well as 300 local jails. There is currently no public notice of which local jails participate in CAP.
24. In FY 2009, some 48% of the individuals that ICE charged as deportable came to ICE's attention through CAP. In FY 2011 alone, CAP agents charged 216,894 people with civil immigration violations. This huge number is part of a larger trend: each year between FY 2008 and FY 2011, CAP agents charged well over 200,000 people. Since FY 2004, CAP has facilitated the arrests of over 1.1 million people.
25. The CAP program is expanding. For FY 2013, ICE requested more than \$216 million in congressional appropriations for CAP, over \$50 million more than it did as recently as 2006, and \$20 million more than in FY 2012.
26. CAP's operations vary widely. Based on information and belief, some jurisdictions have ICE agents located in jails to routinely interview and process prisoners. At other facilities, ICE agents interview incarcerated individuals either during regular or ad hoc visits, or by telephone or video conference. Some counties give ICE around-the-clock access to jails,

while other localities limit ICE agents' access to certain hours or days of the week. Some local jurisdictions may report to ICE every day, while others report more infrequently.

27. The internal workings of this enormous enforcement program remain opaque and poorly documented. The DHS Office of the Inspector General recently found that CAP "did not always record and retain critical information and documentation for its screening and identification activities."
28. On information and belief, DHS and ICE have provided little or no regulatory or sub-regulatory guidance to agents operating under CAP.

Plaintiff AIC's Current Understanding of CAP

29. In February 2010, Plaintiff AIC published a preliminary study of CAP's operations in a single county, entitled "The Criminal Alien Program: Immigration Enforcement in Travis County, Texas." Most of the information in the report came out of Open Records Requests filed under the Texas Public Information Act, that state's analogue to the federal Freedom of Information Act.
30. This report detailed inconsistencies in the implementation of CAP. It found that many local officials in Texas did not understand what participation in the program entailed, or even whether they were participating.
31. The report also highlighted troubling consequences of CAP, finding that it likely led to racial profiling because jail status check programs incentivize pretextual arrests of those who look like immigrants.
32. The report further found that CAP increased distrust of local law enforcement officials among members of immigrant communities and decreased these communities' cooperation with law enforcement, for example, in reporting episodes of domestic violence.

33. In addition, the report raised concerns that ICE is not deploying CAP to fulfill its stated goal of targeting dangerous criminals, but rather is conscripting local police to enforce immigration law by detaining immigrants who have committed only misdemeanors or immigration status-related offenses.
34. For example, the report found that in 2008 in Travis County, 58% of all people detained through CAP had only been charged with a misdemeanor.
35. This report illustrates problems with ICE's implementation of CAP in only one Texas county. The records requested here are critical to understanding whether similarly grave implementation problems exist in other jurisdictions.

The Public Interest in Defendant's Disclosure of CAP Records

36. Disclosure of further information about CAP, and the opportunity to analyze the same, would advance one of Plaintiff AIC's organizational goals, as it would aid public understanding of current immigration enforcement policies.
37. Greater clarity regarding ICE's internal procedures would be in the public interest, as it would aid law enforcement officials in reducing inconsistency in CAP's implementation. It would give them the opportunity to address some of the program's problematic consequences and ensure that CAP is implemented within the confines of the law.
38. Disclosure of further information and analysis of CAP would enable the public to more effectively hold ICE accountable to its policies.
39. Like Plaintiff AIC, Plaintiff Connecticut AILA is invested in just and appropriate immigration policies. It has an interest in ensuring that immigration attorneys, their clients, and the general public are fully informed and aware of the immigration enforcement mechanisms that they may encounter.



40. Plaintiff Connecticut AILA, in concert with AILA National, is also situated to provide immigration policy-related information to the public and to engage the public in fruitful dialogue. Connecticut AILA and AILA National will widely disseminate the requested information to the public through its website and other means discussed in Paragraphs 13 and 14, above.

Plaintiffs' FOIA Request

41. On November 29, 2011, Plaintiffs submitted to ICE a FOIA request for various agency records relating to the development, implementation, and operation of CAP and CAP's predecessors (the "FOIA Request" or "Request"). A copy of Plaintiffs' FOIA Request is attached to this complaint as Exhibit 1.
42. Plaintiffs sent their November 29, 2011 FOIA Request by certified mail, return receipt requested.
43. Plaintiffs sent their Request by facsimile to the number designated by ICE for receipt of FOIA requests, (202) 732-0660, at 4:07 pm on November 29, 2011.
44. In addition, Plaintiffs sent their Request by e-mail to the address designated by ICE for receipt of FOIA requests, ice-foia@dhs.gov, at 4:13 pm on November 29, 2011.
45. Plaintiffs' Request sought a waiver of all search, duplication, and review fees in excess of \$100.00. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k).
46. Plaintiffs' Request sought, in the alternative, a waiver of search fees, as each Plaintiff independently qualifies as a "representative of the news media." *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II); 6 C.F.R. § 5.11(b)(6); 6 C.F.R. § 5.11(d)(1).
47. ICE was required to provide Plaintiffs' requested records at no cost to Plaintiffs, because disclosure of those records "is likely to contribute significantly to public understanding of

the operations or activities of the government,” namely the development, implementation, and operation of CAP and its predecessors—subjects that are poorly understood but of great public importance. *See* 5 U.S.C. § 552(a)(4)(A)(iii).

48. Plaintiffs’ Request is “not primarily in the commercial interest of the requester[s]” because Plaintiffs are non-profit organizations that seek to use the responsive records for public education and public policy advocacy. *See* 5 U.S.C. § 552(a)(4)(A)(iii).

Defendant’s Non-Compliance with FOIA

49. By letter dated November 30, 2011, ICE acknowledged receipt of Plaintiffs’ Request and sought a 10-day extension of the 20-day deadline to respond. *See* 5 U.S.C. § 552(a)(6)(B).
50. By separate letter dated November 30, 2011, ICE denied Plaintiffs’ fee waiver request in its entirety, in a boilerplate statement devoid of legal analysis or logical reasoning. Instead of providing any reasons for the denial, ICE merely listed the six factors for determining whether the applicable legal standard for a fee waiver has been met, as set forth in 6 C.F.R. § 5.11(k), and stated, without elaboration, that Plaintiffs’ Request failed to meet two of those factors. A copy of ICE’s letter is attached to this complaint as Exhibit 2.
51. ICE denied Plaintiffs’ fee waiver request despite the fact that disclosure of the information requested is plainly in the public interest and will significantly contribute to the understanding of the public at large, and notwithstanding that another federal agency has granted Plaintiff AIC a fee waiver in the past based on the same criteria.
52. Plaintiff AILA also received a fee waiver when it submitted a FOIA request to DHS seeking information relating to Customs and Border Protection (CBP). The fee waiver was granted because the request was found to serve the public interest.

53. Because ICE's fee waiver denial was erroneous as a matter of law, Plaintiffs timely appealed ICE's decision by letter dated December 16, 2011. A copy of the appeal is attached to this complaint as Exhibit 3.
54. Plaintiffs submitted their appeal to ICE by certified mail, return receipt requested.
55. By letter dated January 11, 2012, ICE acknowledged receipt of Plaintiffs' appeal of the fee waiver denial.
56. By letter dated January 27, 2011—39 working days after ICE acknowledged receipt of Plaintiffs' Request—ICE requested that Plaintiffs narrow the scope of their request, but noted that ICE had not denied Plaintiffs' request. ICE did not address the issue of fees or the requested fee waiver in this letter. A copy of ICE's letter is attached to this complaint as Exhibit 4.
57. To date, ICE has not provided the records requested by Plaintiffs in their FOIA Request, notwithstanding ICE's obligation to respond within 30 working days (ICE having sought a 10 day extension of the 20-day deadline). *See* 5 U.S.C. §§ 552(a)(6)(A)(i), 552(a)(6)(B).
58. Due to ICE's non-response to Plaintiffs' FOIA Request, Plaintiffs have exhausted the applicable administrative remedies with respect to their FOIA Request. *See* 5 U.S.C. § 552(a)(6)(C)(i).
59. ICE has wrongfully withheld the requested records from Plaintiffs.
60. To date, Plaintiffs have received no response from ICE regarding their appeal of the fee waiver denial, notwithstanding ICE's obligation to make a determination within 20 working days of receipt of the appeal. *See* 5 U.S.C. § 552(a)(6)(A)(ii).

61. Due to ICE's non-response to Plaintiffs' administrative appeal of the fee waiver denial, Plaintiffs have exhausted the applicable administrative remedies with respect to their FOIA Request. *See* 5 U.S.C. § 552(a)(6)(C)(i).

**FIRST CLAIM FOR RELIEF:  
Defendant DHS Failed to Disclose and Release Records  
Responsive to Plaintiffs' Request**

62. Plaintiffs repeat and re-allege each and every allegation contained in Paragraphs 1-61 as if repeated and reincorporated herein.
63. ICE, a component of DHS, has violated Plaintiffs' rights to DHS records under 5 U.S.C. § 552.

**SECOND CLAIM FOR RELIEF:  
Defendant DHS Failed to Affirmatively Disclose Records  
Responsive to Plaintiffs' Request**

64. Plaintiffs repeat and re-allege each and every allegation contained in Paragraphs 1-63 as if repeated and reincorporated herein.
65. Defendant's failure to make its records available to the public violates 5 U.S.C. §§ 552(a)(1)-(2).

**THIRD CLAIM FOR RELIEF:  
Defendant DHS Failed to Grant Plaintiffs' Public Interest Fee Waiver Request**

66. Plaintiffs repeat and re-allege each and every allegation contained in Paragraphs 1-65 as if repeated and reincorporated herein.
67. ICE, a component of DHS, erroneously denied Plaintiffs' public interest fee waiver or fee reduction request in violation of 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k).

**Requested Relief**

WHEREFORE, Plaintiffs respectfully request that this Court:

- 1) Assume jurisdiction over this matter;
- 2) Order Defendant to disclose the requested records in their entireties and to make copies available to Plaintiffs;
- 3) Declare that Defendant's failure to grant Plaintiffs' fee waiver request is unlawful and that Plaintiffs are entitled to a full fee waiver;
- 4) Enjoin Defendant from assessing fees or costs for processing of Plaintiffs' FOIA Request;
- 5) Provide for expeditious proceedings in this action;
- 6) Award Plaintiffs costs and reasonable attorneys' fees in this action as provided by 5 U.S.C. § 552(a)(4)(E); and
- 7) Grant any other relief the Court deems appropriate.

Dated March 8, 2012  
New Haven, Connecticut

/s/  
Respectfully submitted,

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<sup>1</sup>Pro hac vice motion forthcoming

<sup>2</sup>Pro hac vice motion forthcoming